U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF A-O-

DATE: JAN. 12, 2016

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a global operations training and competency advisor in the oil and gas industry, seeks classification as a member of the professions holding an advanced degree. *See* Immigration and Nationality Act (the Act) § 203(b)(2), 8 U.S.C. § 1153(b)(2). The Director, Texas Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

The Petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The Director found that the Petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the Petitioner has not established that a waiver of a job offer would be in the national interest. On appeal, the Petitioner submits a brief and additional evidence.

I. LAW

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –
>
> > (A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer –
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

II. ISSUES

The Petitioner received a Master of Science degree in Environmental Microbiology from [redacted] in Nigeria. As the Director found that the Petitioner qualifies as a member of the professions holding an advanced degree, the sole issue in contention is whether the Petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." *Matter of New York State Dep't of Transp.* (*NYSDOT*), 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm'r 1998), set forth several factors which must be considered when evaluating a request for a national interest waiver. First, a petitioner must establish that he seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, a petitioner must demonstrate that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must show that he will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

The Director found that the Petitioner's employment as a global operations training and competency advisor was in an area of substantial intrinsic merit and that the proposed benefits of his work concerning human resource management systems for [redacted] functional groups would be national in scope. It remains, then, to determine whether the Petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

Although the national interest waiver hinges on prospective national benefit, the petitioner must show that his past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner's subjective assurance that he will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the petitioner, rather than to facilitate the entry of an individual with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

Furthermore, eligibility for the waiver must rest with the petitioner's own qualifications rather than with the position sought. Assertions regarding the overall importance of a petitioner's area of expertise cannot suffice to establish eligibility for a national interest waiver. *Id.* at 220. At issue is whether the petitioner's contributions in the field are of such significance that he merits the special benefit of a national interest waiver, a benefit separate and distinct from the visa classification he seeks.

A petitioner must exhibit a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6. In evaluating the petitioner's achievements, original innovation, such as demonstrated by a patent, is insufficient by itself. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *Id.* at 221, n. 7.

III. FACTS AND ANALYSIS

The Petitioner filed the Form I-140, Immigrant Petition for Alien Worker, on October 22, 2013. At the time of filing, the Petitioner was working as a Global Operations Training and Competency Advisor for . The Director determined that the Petitioner's impact and influence on his field did not satisfy the third prong of the *NYSDOT* national interest analysis.

The Petitioner initially submitted documentation pertaining to his exceptional ability in the oil and gas industry and its managerial functions. Specifically, he provided his Master of Science degree from diplomas from the various letters detailing his employment experience, a information concerning his annual remuneration from a membership card for the two "Recognition and Award" (R&A) honors from and a "Certificate of Appreciation" from the Academic records, occupational experience, licenses, salary information, professional memberships, and recognition for achievements are elements that can contribute toward a finding of exceptional ability. *See* 8 C.F.R. § 204.5(k)(3)(ii)(A) - (F). The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree, and an additional finding of exceptional ability would be moot. However, the Petitioner must also demonstrate eligibility for the additional benefit of the national interest waiver.

We note that the regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. Pursuant to section 203(b)(2)(A) of the Act, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. *NYSDOT*, 22 I&N Dec. at 218, 222. Therefore, whether a given individual seeks classification as an alien of exceptional ability or as a member of the professions holding an advanced degree, that individual cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in her field of expertise. The national interest waiver is an additional benefit, separate from the classification sought, and thus eligibility for the underlying classification does not demonstrate eligibility for the additional benefit of the waiver.

Without documentation showing that the Petitioner's work has influenced the field as a whole, we cannot conclude that he has demonstrated eligibility for the national interest waiver. *See id.* at 219, n. 6. For example, with respect to the Petitioner's R&A awards from and the Certificate of Appreciation from the thanking him for his visit to Israel, there is no documentary evidence demonstrating that they are indicative of the Petitioner's impact on the field of human resources management or the oil and gas production industry as a whole. In addition, the Petitioner submitted various certificates of completion for training courses relating to his professional development as a manager and human resources advisor. For instance, he completed courses entitled "Fundamentals of Finance and Accounting for Nonfinancial Managers" and "Facilitative Leadership: Tapping the Power of Participation." While taking such courses increases

one's professional knowledge, there is nothing inherent in the Petitioner's managerial training to establish his eligibility for the national interest waiver.

The Petitioner provided various reference letters discussing his activities in the field. For example, Director of Environmental Health and Safety for the indicated that the Petitioner's effective project management and employee development for project in the achieved a target of 45,000 barrels of oil per day and 180,000 barrels of water injection per day, but there is no documentary evidence showing that the Petitioner's work affected practices throughout the oil and gas industry or has otherwise influenced the field as a whole.

In addition, mentioned the Petitioner's "unique experience and qualification that helps improve employee development in a global operational setting." Specifically, noted that the Petitioner "has over 14 years' experience in global field operations in the oil and gas industry that has helped employees to perform at the optimum on oil and gas production." Any assertion that a petitioner possesses useful skills, or a "unique background" relates to whether similarly-trained workers are available in the United States and is an issue under the jurisdiction of the U.S. Department of Labor through the labor certification process. *See NYSDOT*, 22 I&N Dec. at 221. also indicated that the Petitioner set standards regarding the effective use of human resources to achieve targeted goals, and pioneered the development of a "Competency and Compliance online management tool" for developing personnel in Nigeria and for competency management of and employees. There is no evidence demonstrating, however, that the Petitioner's work has had a wider effect on the oil and gas industry or has otherwise influenced the field of human resources as a whole.

President of Nigeria, asserted that the Petitioner effectively delegated responsibilities among the construction team involved in offshore production facility upgrade projects in the area of Nigeria. In addition, noted that the Petitioner's work "resulted in timely completion of the task in readiness for early shutdown tie-in work thereby helping to avoid a major crude oil production drop that would have cost millions of dollars in losses." There is no evidence showing, however, that the Petitioner's work had a substantial impact beyond the company or has otherwise affected the industry as a whole. also stated that the Petitioner "facilitated the contractors' workshop for in 2010 with great emphases on Safe Work practices" and that the "knowledge gained in the workshop helped in the significant reduction of incidents amongst contractors working for " further indicated that for 2011 costs associated with contractor incidents "reduced by over $150 million." The record, nevertheless, does not demonstrate that the Petitioner's course materials have influenced the field as a whole. For example, there is no documentation reflecting that the Petitioner's work had a wider effect on safety practices throughout the field and was not just limited to contractors.

President and Chief Executive Officer of indicated that the Petitioner "effectively connects with partners and community reps and has been able to use his proactive initiatives to advise ahead of pending crises such as the numerous

communal crises in the area of Nigeria." In addition, mentioned that the Petitioner "led the negotiations between and the [ ] partner to approve the remittance of the $500 million previous (sunk) costs to that was incurred by on project in Nigeria." While statements show that the Petitioner's work affects business operations, there is no documentary evidence demonstrating his influence on the field as a whole.

further stated that the Petitioner "led the Operations Reliability and Maintainability team" that successfully implemented the shutdown and upgrade of facilities in a timely manner, "thereby helping the Business Unit to save millions of dollars as a result of minimized downtime." Although the Petitioner helped generate savings for his business unit, there is no indication that his work has affected the industry as a whole. Lastly, asserted that the Petitioner "is an expert in competency-based management" and that such expertise is a relevant part of U.S. efforts to attain energy sufficiency, but did not provide specific examples of how the Petitioner's work has influenced the oil and gas industry or the human resources field as a whole.

With respect to the project, former Training Superintendent for Nigeria and current Chairman of in Ghana, stated that the Petitioner assisted him in negotiations with government partners to resolve a "delay in the approval of the over $40 million training contract for the training of the local workforce." indicated that approval of the contract provided with an advantage over other multinational companies in terms of staffing in Nigeria and Africa. While the Petitioner helped in accelerating approval of the contract, there is no documentary evidence showing that his work has had a wider impact beyond and its workforce, or has otherwise influenced the field as a whole.

Furthermore, regarding the Petitioner's experience in crude oil and gas commercialization, indicated: "[The Petitioner] was specifically instrumental to the development of the which enabled all the various investing partners of the project in the Nigerian and to arrive at a workable profit sharing agreement." In addition, asserted that "a timely agreement was achieved which helped in saving more than $1 billion [in] penalty fines and production losses that would have been incurred as a result of [a] pending delay in production should there have been disagreement amongst the partners." added that the agreement was an "industry first in Nigeria as many other competitors incurred significant losses to long time disputes on [the] production sharing formula." aforementioned statements reflected that the Petitioner was instrumental to the development of the profit sharing agreement, but there is no evidence indicating that the Petitioner's work has affected the field as a whole as to warrant a waiver of the job offer.

Professor of Business Administration at stated:

> One of the areas where [the Petitioner] has performed impressive work that will further the national interest is in his comprehensive work in strategic staffing and employee development. . . . [The Petitioner] was able to strategically staff in order to maximize barrel production, a clear company-specific, industry-wide, and national benefit.

With regard to comments concerning the Petitioner's strategic staffing and employee development experience, any objective qualifications which are necessary for the performance of the occupation can be articulated in an application for labor certification. *NYSDOT*, 22 I&N Dec. at 220-21. While the Petitioner's work has produced company-specific benefits for does not provide specific examples of how the Petitioner's human resources work in Nigeria or the United States has resulted in industry-wide or national benefits, or has otherwise influenced the field as a whole.

Furthermore, asserted:

> [The Petitioner] pioneered competency management at and within the global oil and gas industry, positing that competency management is critical to develop the required proficient work force in oil and gas exploration. As part of these efforts, [the Petitioner] developed a competency and compliance online management tool. This tool – used to develop employees at in Nigeria – was cutting-edge and was ultimately adopted for competency management of over 6,000 employees.

indicated that the Petitioner developed a competency and compliance online management tool for but did not explain how the Petitioner's tool has affected human resource practices beyond the company. Again, there is no evidence demonstrating that the Petitioner's work has influenced the field or industry at a level sufficient to waive the job offer requirement. In addition, stated that the Petitioner's "development work in competency management are not likely to be confined solely to As with many business advances, this work – to the extent that it improves productivity and efficiency –holds the promise of improvement throughout the energy industry." speculation about possible future impact of the Petitioner's work does not establish that he had already influenced the industry at the time of filing. Eligibility must be established at the time of filing. 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971).

Lastly, asserted that the Petitioner's knowledge and talent "places him among the world's leading executives in human resource management for the oil and gas industry and has enabled him to work throughout the industry to make the industry as a whole more competitive and profitable." The record, however, does not include documentary evidence showing that the Petitioner's work has had an industry-wide effect, or setting him apart from other executives in human resource management for the oil and gas industry. USCIS need not rely on unsubstantiated statements. *See 1756, Inc. v. U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990) (holding that an agency need not credit conclusory assertions in immigration benefits adjudications).

In addition, the Petitioner provided a December 2012 e-mail from his supervisor in Nigeria, stating:

> One of the items [the Petitioner] was working on prior to his departure [from Nigeria] was the incorporation of Operator Driven Reliability [ODR] into day to day operations such that the Business Unit could capture their SERIP [Surface Equipment Reliability and Integrity Process] Stage 3 validation. There are several facets to Stage 3 validation and the ODR component, competing with deliverables under the obligation of others, is the first delivered thanks to and his back to back shepherding the process.

While noted that the Petitioner successfully delivered a component of his business unit's ODR process, there is no documentary evidence demonstrating that his work has affected practices throughout the oil and gas industry or has otherwise influenced the field of human resources as a whole. further indicated that the Petitioner's performance in Nigeria "was above average relative to others in the PSG [Pay Scale Grade] 24 peer group." Even if the Petitioner had demonstrated a degree of expertise significantly above that ordinarily encountered in his peer group, as previously discussed, he cannot qualify for a national interest waiver just by showing exceptional ability in the field.

The Petitioner submitted letters of varying probative value. We have addressed the specific assertions above. Generalized conclusory assertions that do not identify specific contributions or their impact in the field have little probative value. *See 1756, Inc.*, 745 F. Supp. at 15. In addition, uncorroborated assertions are insufficient. *See Visinscaia v. Beers*, 4 F.Supp.3d 126, 134-35 (D.D.C. 2013) (upholding USCIS' decision to give limited weight to uncorroborated assertions from practitioners in the field); *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988) (holding that an agency "may, in its discretion, use as advisory opinions statements . . . submitted in evidence as expert testimony," but is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought and "is not required to accept or may give less weight" to evidence that is "in any way questionable"). The submission of reference letters supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the petitioner's eligibility. *Id. See also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). As the submitted reference letters did not establish that the Petitioner's work has influenced the field as a whole, they do not demonstrate his eligibility for the national interest waiver.

The Petitioner's evidence included a November 2013 e-mail inviting him to be "the speaker of at the upcoming ' in June 2014. The invitation and the Petitioner's participation in the conference post-date the filing of the Form I-140. Again, eligibility must be established at the time of filing. 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Accordingly, we will not consider any presentations given after October 22, 2013, the date the petition was filed, as evidence to establish the Petitioner's eligibility at the time of filing. Furthermore, in regard to the Petitioner's presented work, there is no presumption that every conference presentation demonstrates influence

on the field as a whole; rather, the Petitioner must document the actual impact of his presentation. In this instance, there is no evidence showing that once disseminated through presentation, the Petitioner's work has affected the field as a whole.

In addition, the Petitioner provided documentation of his business trips to offices in Canada; California; and California. The Petitioner also submitted a letter thanking him for attending the in April-May 2013. Furthermore, the Petitioner provided invitations for him to attend various conferences such as the (January 2013), (2014), (December 2013), the (2014), and the (2014). We note that the latter four conferences post-dated the filing of the Form I-140. Regardless, there is no documentary evidence showing that the Petitioner's business trips for and attendance at various conferences are indicative of his influence on the field as a whole.

The Petitioner's appellate submission includes e-mails from 2013 and 2014 reflecting his involvement in hiring and developing candidates for subject matter expert positions at but there is no indication that the Petitioner's work had an impact beyond the company. Again, the submitted evidence does not show that the Petitioner's work has affected the field as a whole as to warrant a waiver of the job offer.

Additionally, the Petitioner asserts that his skills, experience, background, and company expertise are not amenable to the labor certification process. The inapplicability or unavailability of a labor certification, however, cannot be viewed as sufficient cause for a national interest waiver; a petitioner still must demonstrate that he will serve the national interest to a substantially greater degree than do others in his field. *See NYSDOT*, 22 I&N Dec. at 218, n.5.

Finally, the Petitioner mentions a previous unpublished decision in which we determined that an individual's impact "beyond the success and longevity of his own business ventures" was sufficient to justify a waiver of the job offer requirement. The Petitioner, however, did not provide a copy of the unpublished decision in the classification sought. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Assoc. Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). The Petitioner has not offered evidence to establish that the facts of the instant petition are analogous to those in the unpublished decision. Furthermore, while 8 C.F.R. § 103.3(c) provides that precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding.

III. CONCLUSION

Regarding the Petitioner's achievements at we accept that his work has provided benefits to the company and its project partners. We also acknowledge standing in the oil and gas

industry. Nonetheless, the Petitioner has not shown that any of his work with has affected human resources practices at other oil and gas entities. Considering the letters and other evidence in the aggregate, the record does not establish that the Petitioner's work has influenced the field as a whole or that he will otherwise serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. The Petitioner has not shown that his past record of achievement is at a level sufficient to waive the job offer requirement which, by law, normally attaches to the visa classification he seeks.

A plain reading of the statute indicates that it was not the intent of Congress that every advanced degree professional or alien of exceptional ability should be exempt from the requirement of a job offer based on national interest. Although a petitioner need not demonstrate notoriety on the scale of national acclaim, he must have "a past history of demonstrable achievement with some degree of influence on the field as a whole." *NYSDOT*, 22 I&N Dec. at 219, n.6. On the basis of the evidence submitted, the Petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the Petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the Petitioner has not met that burden.

ORDER: The appeal is dismissed.

Cite as *Matter of A-O-*, ID# 14953 (AAO Jan. 12, 2016)